

PROTECTION OF LEGAL RIGHTS

Consumer Guide

Introduction

Consumers of all ages, particularly senior citizens, are vulnerable to the fast pitch and hard sell of the professional salesperson. Today, we also face the impersonal, but no less effective, pitch of the television or radio advertiser. With such pressures being exerted against us, it is very difficult to make intelligent buying decisions.

Even though consumer protection legislation and court decisions in favor of consumer rights are on the increase, your best protection is for you to be a well-informed, careful buyer. Smart consumers know their legal rights, are cautious of product exaggerations, and are unafraid to demand satisfaction for the price of their purchase. This section is designed to help you be an alert consumer who is less likely to be taken advantage of by fast-talking salespeople or misleading advertising.

Contracts and Credit Buying

Almost every purchase you make as a consumer involves entering into a contract between you, the buyer, and a merchant, the seller. If you have ever bought a car, hired a workman to do repairs, or purchased a pair of shoes using a credit card, you have entered into a contract.

Contracts most often come into the picture for consumers when the seller extends credit for purchase of an item or service, with payment delayed or spread out over a period of time. This arrangement is commonly known as “buying on time” or “buying on credit.” In effect, the store, dealer, or company from which you are buying extends a loan in the amount needed to purchase the item or service. You, in turn, agree to pay back that money, plus a finance charge of some kind.

Whenever you buy on credit, make sure you know how much your total cost will be. Know how long you will have to make payments and be sure you can meet them. The **Federal Truth-in-Lending Act** requires persons and businesses who extend credit to tell consumers what that credit will cost in the long run. When you buy on credit, the seller must tell you the actual finance charge (the price you pay for the privilege of paying over time in installments, which is added to the cash price) and the annual percentage rate of interest on the purchase you wish to make. Lenders who fail to disclose this information may be sued by their customers for twice the amount of the finance charge—from a minimum of \$100 to a maximum of \$1,000—plus court costs and attorney’s fees. If lenders are convicted of willfully or knowingly disobeying the law, they can be fined up to \$5,000 or be imprisoned for one year, or both.

Federal truth-in-lending laws also grant the right to cancel any contract in writing within three days, if the contract requires that the consumer’s home be used as collateral or if a lien on the home could result from the contract, as in a home improvement or home repair agreement.

Before signing any sales contract, ask these questions:

- Do I know what I’m buying?
- Do I understand to my satisfaction what the contract says and what my obligations will be under it?
- Can I get just about the same item elsewhere at a better price?
- If the purchase is for credit, am I satisfied with the price I’m paying for the loan?

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- What kind of protection do I have in the way of guarantees and warranties? (Buying something “as is” means no warranty or guarantee about the product at all.)
- Do I need to have the contract reviewed by an attorney?

Basic Contract Do’s and Don’t’s

DO insist that the salesperson let you take home a copy of the contract before you sign it.

DO show the contract to a friend or a lawyer if you have any questions about any provision of the contract.

DO insist that all promises (guarantees and warranties) be put in writing; otherwise, they may not be enforceable.

DO keep copies of all contracts, payment records, and complaint letters in a safe place.

DO ask your agent or the seller to include the following provision in the document if you have any questions about contract terms:

“This contract is contingent upon the approval of my attorney, and the contingency shall continue in effect until ____ (DATE) ____.”

DON’T deal with any salesperson who refuses to let you take home a filled-in contract before you sign it.

DON’T sign anything unless you have had time to read it carefully or have it read to you, and you fully understand what it says.

DON’T ever sign a contract with blank spaces that are to be filled in later by the salesperson.

Credit Card Finance Charges

If you have a credit card from a department store, bank, an oil company, or a financial institution, you are normally required to pay a monthly finance charge based on the unpaid balance of your account. The effective annual percentage rate for credit card transactions is not limited by Virginia law and may be imposed at the rate set by the issuer of the card and agreed to by you. All issuers of credit cards give a period of time within which, if they receive payment in full, no finance charge will apply (unless used for a cash advance). If charges are not paid in full before the due date, interest charges may be assessed on new purchases as well as the last balance-due amount.

Unsolicited Credit Cards

It is illegal for a card issuer to send you a credit card unless you ask or apply for one. A card issuer, however, may send you an application for a card or a new card to replace an expired one without your request.

Lost or Stolen Credit Cards

The most you will have to pay for unauthorized charges is \$50 on each card, even if someone runs up several hundred dollars’ worth of charges before you report a card missing. In any event, your risk on lost or stolen credit cards is limited. You do not have to pay for any unauthorized charges made after you notify the

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card company of loss or theft of your card. So keep a list of your credit card numbers and notify card issuers immediately if a card is lost or stolen.

Bad Credit Ratings

If you learn that your credit has been damaged, you are authorized under the **Fair Credit Reporting Act** to request from the credit reporting agency an accurate report showing any information transmitted about your credit standing. If you challenge the information, the agency must reinvestigate, and if it still is not resolved, you may file a protest which will remain in the report. You are entitled to sue for damages, attorney's fees, and investigation costs if the agency does not comply.

Error in Billing

If you think your bill is wrong or you want more information about it, notify the creditor, in writing, within 60 days after the bill was mailed and keep a copy of your letter. Be sure to include:

- your name and account number.
- a statement that you believe the bill contains an error and an explanation of why you believe there is an error;
- the suspected amount of the error.

While you are waiting for an answer, you do not have to pay the disputed amount or any minimum payments or finance charges that apply to it. You are still obligated to pay all parts of the bill that are not in dispute.

The creditor must acknowledge your letter within 30 days unless your bill is corrected before then. Within two billing periods, but in no case more than 90 days, the creditor must correct your account or explain why the bill is correct.

If the creditor made a mistake, you do not have to pay any finance charges on the disputed amount. The creditor must credit your account for the full amount in dispute or partially correct your account and explain what you still owe. You then have the time usually allowed on the account to pay any balance. If no error is found, the creditor must promptly send you a statement of what you owe. In this situation, the creditor may include any accumulated finance charges and any minimum payments you missed while you were questioning the bill.

If you still are not satisfied, you should notify the creditor within the time you have to pay your bill (and keep a copy of your letter); however, the creditor's obligations have now been fulfilled, except for requirements regarding your credit rating.

Once you have written about a possible error, the creditor may not give out information to other creditors or credit bureaus or threaten to damage your credit rating. Before answering your letter, the creditor may not take any collection action on the disputed amount or restrict your account because of the dispute. A creditor can, however, apply the disputed amount against your credit limit.

After your bill has been explained, and if you still disagree, in writing (keep a copy) within the time allowed for payment but do not pay, the creditor can report your account as delinquent and begin collection pro-

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ceedings. If this is done, the creditor also must report that you have challenged your bill and provide you, in writing, the name and address of each person and/or organization to whom your credit information has been given. When the matter is settled, the creditor must advise each person or organization given credit information of the outcome.

The federal law applies to personal, family, and household debts, such as money owed for the purchase of a car, for medical care, or for charge accounts.

Collection Agencies

When you are paying for a product or service on time and get behind on your payments, the loan company or bank may refer your debt to a collection agency.

Federal law prohibits abusive, deceptive, and unfair debt collection practices, and its purpose is to ensure fairness. The law does not, however, cancel legitimate debts. A debt collector is anyone other than the creditor and his employees and is usually a collection agency. A debt collector may contact you in person or by mail, telephone, or telegram, but must not contact you at inconvenient or unusual places or times, such as before 8 a.m. or after 9 p.m., unless you agree otherwise. Furthermore, a debt collector may not contact you at work if your employer disapproves.

Within five days after you are first contacted, the debt collector must send you a written notice telling you:

- the amount of money you owe;
- the name of the creditor to whom you owe the money; and
- what to do if you feel you do not owe the money.

If you believe you do not owe the money, you should send a letter (keep a copy) to the creditor within 30 days after you are first contacted saying you do not owe the money. A debt collector may begin collection activities again only if you are sent proof of the debt.

You may stop a debt collector from contacting you by requesting it in writing (keep a copy). Once you tell a debt collector not to contact you, the debt collector no longer may do so, except to tell you that there will be no further contact. The creditor, however, may continue to contact you. The debt collector may notify you that some specific action may be taken but only if the debt collector or the creditor normally takes such action.

A debt collector, in an effort to locate you, may contact any person; however, the debt collector must only tell people that the purpose is to try to contact you. Once a debt collector knows you have an attorney, the debt collector may only contact your attorney.

The debt collector must not:

- tell anybody else that you owe money;
- in most cases, talk to any person more than once;
- use a postcard to notify you that you owe money; or
- put anything on an envelope or in a letter that identifies the writer as a debt collector.

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Door-to-Door Sales

How many times have you heard the old warning, “Beware of the door-to-door salesman!”? Even the most strong-willed customer occasionally falls prey to an enterprising door-to-door salesperson. But if the “magic spell” cast by the salesperson wears off as soon as he is away from your door with your money or a sales contract, there is something you can do about it.

Virginia law and Federal Trade Commission (FTC) rules allow you a three-day cooling-off period to decide whether to cancel your purchase of goods or services. If you do decide to cancel the sale or rescind the contract, you must send or deliver a written notice to the company or business before midnight of the third business day after the date of the transaction. Virginia law does not require you to follow any particular format in sending your notice to cancel your purchase of goods or services. The FTC rules require you to sign and date one copy of a Notice of Cancellation form which you should receive from the salesperson, along with copies of the sales contract or receipt of sale. You should consider sending the Notice of Cancellation or written letter of cancellation by certified mail, return receipt requested. Keep a copy of the notice for your records and proof that you sent it.

Once the merchant receives the notice letter of cancellation, he or she has 10 days to refund any money received, return any documents that you have signed, return any goods or property that you’ve traded in, and inform you whether he or she will pick up or let you keep any items that were left with you. Products left with you must be available to the seller in the same condition as you received them. It is not your responsibility, though, to ship the items back to the dealer or pay postage expenses for such shipping. The seller must either pick up items left with you, or if you agree to ship them, the seller must pay the return postage expenses. If the seller fails to demand possession of the items within 20 days after cancellation or revocation, the goods become the property of the buyer without any obligation to pay for them.

Virginia law and the FTC rules do not cover cash purchases under \$25.

Mail-Order Merchandise

If you order merchandise by mail, federal regulations require the seller to ship the merchandise to you within the time limits stated in its ad or brochure, or within 30 days if the seller has not specified a delivery period. If the merchandise is not so shipped, e.g., because it is temporarily out of stock, you have the right to cancel your order and have your money refunded within seven days of your cancellation. In a credit transaction, the seller has one billing cycle to adjust your account. If the seller notifies you that he cannot ship the merchandise in the stated time or within 30 days, you may (i) cancel the order and get your money back, (ii) agree to the new shipping date, or (iii) not answer, in which case the seller can assume you agree to the shipping delay. If you do not give your express consent to a shipping delay of more than 30 days, the seller must return your money at the end of the first 30 days of the delay. These regulations do not apply to magazine subscriptions, serial deliveries (except for the initial shipment), mail-order seeds and growing plants, or C.O.D. or credit orders for which your account is not charged prior to shipment.

Unordered Merchandise

You do not have to pay for merchandise that you have not ordered or otherwise requested, and it is illegal for the sender to pressure you to return it or to send you a bill. It is illegal for a merchant to send unordered merchandise other than free samples and merchandise mailed by charitable organizations requesting contributions.

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Any problems relating to mail order dealers or unordered merchandise should be referred in writing to your Postmaster (or local Postal Inspector) and to:

Director, Bureau of Consumer Protection
Federal Trade Commission
Washington, DC 20580

Telemarketing Sales

Just about everyone who owns a telephone has received calls promoting products, services, investment opportunities or contests. Although most telephone offers are legitimate, telemarketing fraud costs consumers billions of dollars a year. Federal rules and common sense can protect you from telephone scams and overly intrusive sales calls.

Under FTC rules, telemarketers may call only between 8 a.m. and 9 p.m. They must tell you immediately who they are and what they are selling—before they make their pitch. You can stop unwanted calls from telemarketers by telling them not to call back. If they do, they're breaking the law.

Before you pay anything, a telemarketer must tell you (i) the total cost of the products or services offered and any restrictions on getting or using them, and (ii) whether a sale is final or nonrefundable. A telemarketer may never withdraw money from your checking account without your express, verifiable authorization. It is also illegal for telemarketers to misrepresent information about whatever they are selling, including prize-promotion schemes.

Telephone scam artists may cold-call individuals listed in a directory or on a mailing list. In more elaborate schemes, advertisements or direct mail pieces invite you to call a certain phone number to claim a prize or to make a purchase. Be skeptical of any deal that sounds too good to be true, and make sure sellers are trustworthy before you hand them your money.

Here are some ways to avoid being victimized by telephone fraud:

- Resist high-pressure sales tactics. Legitimate businesses respect the fact the you're not interested.
- Don't send money—cash, check, or money order—to anyone who insists on immediate payment.
- Keep information about your bank accounts and credit cards to yourself unless you know who you're dealing with.
- Hang up if you're asked to pay for a prize. Free is free.
- Take your time. Ask for written information about the product, services, investment opportunity, or charity that's the subject of the call.
- Before you respond to a phone solicitation, talk to a friend, family member, or financial advisor. Your financial investments may have unexpected consequences for people you care about.

You can fight telephone fraud by reporting scam artists to the Virginia Attorney General's Office at (804) 786-2071 and/or the Virginia Office of Consumer Affairs at (804) 786-2042 for the Richmond area, or 1-800-552-9963. You may also call the National Fraud Information Center (NFIC) at (800) 876-7060, 9 a.m. – 5:30 p.m., Monday through Friday. NFIC is a private nonprofit organization that operates a consumer hotline to provide services and assistance in filing complaints. NFIC also forwards appropriate complaints to the FTC for entry on its telemarketing fraud database.

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For more information about consumer protection under the Telemarketing Sales Rule, write:

Bureau of Consumer Protection
Federal Trade Commission
Public Reference, Room 130
Washington, DC 20580

Unscrupulous Practices

Unscrupulous dealers and businesses have many ways of getting you to part with your hard-earned cash. If not careful, you could find yourself paying unreasonably high interest rates for a credit purchase, or you may be stuck with a piece of shoddy merchandise that you were told was “a steal” at the price you paid for it. Unfortunately, bargains and deals that sound too good to be true usually are, and unwary buyers can end up paying for a costly lesson in consumer education.

Scam artists use dozens of cons to fleece unsuspecting individuals. Some of these schemes involve products and services that are commonly purchased by senior citizens. The following are a couple of the more common schemes that you should guard against.

Bait and Switch

The store or business employing the bait-and-switch technique usually advertises some attractive bargain that is “available in limited quantities” to get you into the store. Once you are there, the sales people try to get you to buy a more expensive item in the same line of merchandise, often by downgrading the bargain model that drew you to the store in the first place. Frequently, the more expensive item is overpriced.

Pigeon Drop

The pigeon drop is a technique used to rob people — particularly elderly persons — of their savings. Usually a pleasant person introduces himself or herself and says that he or she has recently found a large amount of money. The person offers to share the found money with you if you will put up some of your own money to show good faith. After you deliver the agreed-upon amount in an envelope, the “nice” person then (1) distracts you and switches the envelope containing your money with one containing paper, or (2) takes the envelope and promises to deliver your windfall “later” or “tomorrow.” Tomorrow never comes. These cons sometimes sound believable, but they never are. When in doubt, call the police or the Better Business Bureau to see if they know of a scheme that is being used to victimize others in the community.

Home Repairs

Whenever you need to hire someone to work on your home, use caution and shop around. You do not have to hire the first contractor that you find. Get two or three estimates to see who is offering the best bargain. Also, check references before you hire. Inquire about past complaints or potential problems with a business by contacting the Better Business Bureau in your locality.

After you decide on a contractor, insist that your agreement be put in writing. If you don't get all the important things in writing, you're asking for trouble later on. Items such as price and guarantees of the work to be done should be on paper and signed so that you can avoid arguments after the work is completed. Agree in advance that full payment is not due until the work is completed. A good-faith deposit is acceptable, but it should be a small percentage of the total.

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If you plan to pay for the work in installments and the contractor or loan company requires a deed of trust (mortgage) on your home as collateral, remember two things: (1) you have three business days after you make the agreement in which to cancel it, if the work has not begun during that time; and (2) if you get behind on your payments, the contractor or loan company can take your home from you by foreclosing on the deed of trust.

If the contractor is not paid after completion of his work, he can file a document known as a “mechanic’s lien.” If you receive notice that a lien has been filed against your property, consult an attorney.

If you have a dispute with your contractor regarding payment for his work, be certain to obtain a release of all liens placed on your property before you make the final payment. If the contractor refuses, consult an attorney before making any further payments. If you don’t have an attorney, the state and local bars can help through lawyer referral services or by directing you to the nearest Legal Aid office.

Health Quackery

If you have ever been tempted to spend money on products advertised as miracle cures, do not feel embarrassed. Each year, Americans spend billions of dollars on bogus health products and treatments. Tragically, some people are persuaded to buy the useless products rather than to seek effective, proven medical treatment. In order to avoid being a victim of “health quackery,” beware of the following:

- promises of a “quick and painless” cure;
- extraordinary promises such as a claim that a single remedy will cure all diseases;
- testimonials of “satisfied users” which lack any substantive medical support;
- products which are described as “alternatives” (some alternative therapists and healers do not follow accepted scientific protocol);
- “Scientific breakthroughs” which the promoter claims have been overlooked by the medical community.

If medical science has not found a cure for an ailment, then you should not buy a product advertised to cure it. Remember, if it sounds too good to be true, it probably is.

Consumer Remedies

When something goes wrong with a product you’ve bought, or a repair job is poorly done (on a house, car, or anything else), you may seek satisfaction in several ways. A thoughtfully prepared complaint made either in person or in writing (keep a copy) can be an extremely effective way of solving a consumer problem—especially when that complaint is made to the proper authority. You can successfully resolve many problems by this method alone.

Complaints are most effective when accompanied by receipts and other documents that help explain your case. If you are contacting the store or business by mail, send your complaint letter by certified or registered mail, return receipt requested, and keep a copy for your records. Never send originals of any receipt, contract, or documentation. If you are making your complaint in person, try to remain calm, but be firm and make sure what you are told makes sense to you.

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If taking your complaint directly to the store or business does not produce the satisfaction you are seeking, bring the matter to the attention of the Better Business Bureau in your community or contact the Office of Consumer Affairs. (The Virginia Attorney General's Office has a Consumer Section at (804) 786-2116.)

In some areas, law schools and radio and television stations handle consumer complaints at no charge to you as a public service to the community. These services can be extremely helpful.

Consumer protection laws may give you additional remedies, such as the ability to cancel certain types of contracts on your own. In Virginia, general district courts are also available to consumers who believe they have been treated unfairly when the amount does not exceed \$15,000. Some general district courts also have small claims courts when the amount does not exceed \$2,000. (Attorneys are not permitted in small claims courts.)

The Department of Social Services' Adult Protective Services also investigates suspected financial exploitation of seniors. For information, call the toll-free hotline (888) 83-ADULT.

Suits in General District Courts

If you feel that court action is necessary, you may wish to obtain the services of an attorney, although it is not required. One major reason to consult an attorney at this stage is that you may be subject to a counter-suit brought by the person you are suing. If you cannot afford an attorney, contact your local Legal Aid office for assistance. (See **Helpful Contacts**, p. 104)

To file a suit in the general district court, where a judge will decide your case without a jury, your claim must be for \$15,000 or less. To initiate the suit, go to the court clerk in the city or county where you believe the suit should be brought. If you have any doubts, a local clerk of the court will assist you.

The clerk will provide you with a fairly simple filing form to complete and will help you should you need assistance. You (the plaintiff) should have with you the exact name and address of the person or business whom you are suing (the defendant), along with the amount of the claim, the basis of the claim, and a stamped envelope addressed to the defendant. The clerk will answer questions you may have about court procedures or the filing form, but it is not the clerk's duty to help you determine the amount for which you are going to sue.

When you fill out the form to file your case, the clerk will ask you to pay a filing fee of \$25 (\$20 if you are seeking \$200 or less), and may require an additional service fee of about \$12 per defendant. The clerk will then deliver your pleading to the sheriff for service on the defendant.

When you leave the courthouse, be certain you know the RETURN DATE for your case. The return date is the day you are to appear in court. IT IS NOT NECESSARILY THE DATE YOUR CASE WILL BE DECIDED. If the defendant is represented by an attorney, he/she will be entitled to a period of time to prepare the case. Do not be disturbed if the trial date is set for several months after the return date. Court calendars are full, and a delay is not unusual.

If you know that your complaint will be contested, try to talk with the defendant or the defendant's attorney prior to the return date. You may be able to agree upon a trial date and save yourself at least one trip to the courthouse.